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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,234	07/21/2003	Stephen Ritland	4510-10	7545
22442	7590	06/20/2006	EXAMINER	
SHERIDAN ROSS PC			KIM, JOHN	
1560 BROADWAY			ART UNIT	
SUITE 1200			PAPER NUMBER	
DENVER, CO 80202			3733	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/624,234	Applicant(s) RITLAND, STEPHEN	
	Examiner John Kim	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/2/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

It is noted the previous office action (dated 3/6/06) had an error. Invention I (claims 1-20) should be classified in class 606, subclass 53. Invention II still stands as being classified in class 606, subclass 97. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Claims 21-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/6/06.

Applicant's election with traverse of invention I in the reply filed on 4/6/06 is acknowledged. The traversal is on the ground(s) that this application would be a single field of search. This is not found persuasive because as noted above, there was a typo in regards to the subclass of invention I. Also as discussed above, the examiner may be shown by prima facie if the examiner shows separate classifications for the inventions. (MPEP 808.02) In the instant case, the inventions have separate classifications.

The requirement is still deemed proper and is therefore made FINAL.

In regards to the election of species, it is noted the selected embodiment is figure 1. Applicant argues that figure 4 is the preferred bottom shape of the base

configuration. Examiner notes that since figure 4 is a perspective view of figure 1 (the elected species), applicant's argument is thus considered moot.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged (in the specification). Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119 as follows:

It is noted that the provisional application (60/397,191) was filed on 7/18/02 and according to 35 U.S.C. 119 e1, applicant has exactly one year to file a non-provisional application. It is further noted 7/18/03 falls on a Friday. Applicant filed the non-provisional application July 21, 2003, where in the specification applicant claims priority. Furthermore, applicant has not claimed priority as required in the oath or declaration. For the above reasons, the claim of priority is moot and all references to that claim of priority should be removed from the application. If the applicant feels that the above statements are in error, examiner asks the applicant to submit a proof of mailing or other form of evidence.

Specification

The disclosure is objected to because of the following informalities: the section entitled "cross reference to related applications" should be removed, in its entirety. The reasons for the objection is detailed in the above section regarding the claim to priority.

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Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 10, 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Caesar (US Pat 2825329).

In regards to claims 1-3, 10, 12-15, Caesar discloses having a device (mounting base) with a securing mechanism (means for securing) (158), a body (150), a first and second aperture (156, one on each side of the body), projection (means for stabilizing) (152) located at the bottom of the body, which is noted to be a pin.

It is acknowledged that functional language is as important as the structural limitations. However, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. (See MPEP 2114). If the functional language is silent in the prior art, then the examiner will determine if the prior art can inherently perform the claimed function. To establish inherency, extrinsic evidence must be presented. In this case, the extrinsic evidence is the structural similarity to the disclosed invention (*In re Schreiber*, 128 F.3d.1473, 44 USPQ2d 1429 (Fed Cir 1997)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-9 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caesar (US Pat 2825329).

Caesar discloses the claimed invention except for having apertures located on all sides of the body. It is noted that Caesar discloses having apertures on the top and bottom surfaces, and not on the side. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have apertures located on all sides of the body, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caesar (US Pat 2825329) in view of Maruyama et al. (US Pat 5487741).

Caesar discloses the claimed invention except for having flanges in the apertures. Flanges are commonly used to provide extra strength in holding objects. Maruyama disclose having apertures with flanges (23a, 25a). It would have been obvious to one skilled in the art at the time the invention was made to construct the invention of Caesar, including flanges in view of Maruyama in order to provide greater strength of holding between the screw and body.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JK 


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER